

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

EDWARD HOLBROOK

Plaintiff,

VS.

THE CITY OF PHILADELPHIA, et al

Defendant

: CIVIL ACTION
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: 10-2563
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**DEFENDANT CITY OF PHILADELPHIA AND FELIX RIVERA'S
ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S AMENDED
COMPLAINT**

Defendants, The City of Philadelphia and Felix Rivera, by and through the undersigned counsel, Niya L. Blackwell, Deputy City Solicitor, hereby file their Answer and Affirmative Defenses to the Plaintiff's Amended Complaint, and aver as follows:

1. The allegations in this paragraph constitute conclusions of law to which no response is required. To the extent to which a response is required, the allegations in this paragraph are denied.
2. The allegations in this paragraph pertain to parties other than Answering Defendant, and therefore requires no response.
3. It is admitted that The City of Philadelphia is a municipality of the Commonwealth of PA. All other allegations in this paragraph are denied.
4. Denied.
5. The allegations in this paragraph pertain to parties other than Answering Defendant, and therefore requires no response.

6. Denied.

FACTUAL ALLEGATIONS

7. After reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

8. After reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

9. The allegations in this paragraph are denied as inaccurate, misleading and untrue.

10. The allegations in this paragraph are denied as inaccurate, misleading and untrue.

11. The allegations in this paragraph are denied as inaccurate, misleading and untrue.

12. After reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

13. Upon current information and belief, admitted.

14. The allegations in this paragraph are denied as inaccurate, misleading and untrue.

15. Answering Defendants have no knowledge or means of ascertaining the truth or falsity of the allegations respecting the injuries, sufferings and/or damages alleged to have been sustained by Plaintiff and the same are accordingly denied.

16. The allegations in this paragraph are denied as inaccurate, misleading and untrue.

17. Answering Defendants have no knowledge or means of ascertaining the truth or falsity of the allegations respecting the injuries, sufferings and/or damages alleged to have been sustained by Plaintiff and the same are accordingly denied.

18. The allegations in this paragraph pertain to parties other than answering defendants and therefore require no response.

19. Answering Defendants have no knowledge or means of ascertaining the truth or falsity of the allegations in this paragraph.

20. The allegations in this paragraph are denied as inaccurate, misleading and untrue.

21. The allegations in this paragraph are denied as inaccurate, misleading and untrue.

22. Answering Defendants have no knowledge or means of ascertaining the truth or falsity of the allegations respecting the injuries, sufferings and/or damages alleged to have been sustained by Plaintiff and the same are accordingly denied.

FIRST CAUSE OF ACTION

23. Paragraphs 1-22 are incorporated herein by reference as though fully set forth at length.

24. The allegations in this paragraph constitute conclusions of law to which no response is required. To the extent to which a response is required, the allegations in this paragraph are denied

25. Answering Defendants have no knowledge or means of ascertaining the truth or falsity of the allegations respecting the injuries, sufferings and/or damages alleged to have been sustained by Plaintiff and the same are accordingly denied.

26 a-g. Denied

27. The allegations in this paragraph constitute conclusions of law to which no response is required. To the extent to which a response is required, the allegations in this paragraph are denied.

28 . The allegations in this paragraph constitute conclusions of law to which no response is required. To the extent to which a response is required, the allegations in this paragraph are denied.

SECOND CAUSE OF ACTION
SUPPLEMENTAL STATE LAW CLAIMS

29. Paragraphs 1-28 are incorporated herein by reference as though fully set forth at length.

30. The allegations in this paragraph constitute conclusions of law to which no response is required. To the extent to which a response is required, the allegations in this paragraph are denied.

31. The allegations in this paragraph constitute conclusions of law to which no response is required. To the extent to which a response is required, the allegations in this paragraph are denied.

32. The allegations in this paragraph constitute conclusions of law to which no response is required. To the extent to which a response is required, the allegations in this paragraph are denied.

WHEREFORE, Answering Defendants deny liability upon all causes of action declared upon and demands judgment in their favor, plus interest and costs.

City of Philadelphia Law Department

/s/Niya L. Blackwell

Niya L. Blackwell

Deputy City Solicitor

Attorney ID # 79930

Law Department-Civil Rights Unit

1515 Arch Street, 14th Floor

Philadelphia, PA 19102

(215) 683-5445

Dated: August 9, 2011

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff has failed to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Answering Defendants assert all the defenses, immunities, and limitations of damages available under the “Political Subdivision Tort Claims Act,” and aver that Plaintiff’s remedies are limited exclusively thereto. Act of Oct. 5, 1980, No. 142, P.L. 693, 42 Pa C.S.A. § 8541 et. seq.

THIRD AFFIRMATIVE DEFENSE

Answering Defendants did not deprive the Plaintiff of any rights owing to him under the laws of the United States of America or the Commonwealth of Pennsylvania.

FOURTH AFFIRMATIVE DEFENSE

It is averred that at all times concerned with this litigation, the Answering Defendants acted in a manner which was proper, reasonable, lawful, and in the exercise of good faith.

FIFTH AFFIRMATIVE DEFENSE

It is further averred that if Plaintiff sustained injuries and damages as alleged in the Complaint, it was do solely to Plaintiff’s negligence, carelessness and reckless disregard for the rights of others and themselves.

SIXTH AFFIRMATIVE DEFENSE

It is further averred that if Plaintiff sustained injuries and damages as alleged in the Complaint, it was do solely to the fact that Plaintiff violated Federal Statutes, State Statutes and/or City Ordinances.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's alleged injuries, sufferings and damages, if any, were caused by Plaintiff's own willful and malicious misconduct.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff has failed to state a claim under 42 U.S.C. Section 1983 upon which relief can be granted as the same relates to the Answering Defendant.

WHEREFORE, Answering Defendants deny liability upon any and all of the causes of action declared upon, and demands judgment in their favor plus interests and costs.

City of Philadelphia Law Department

/s/Niya L. Blackwell

Niya L. Blackwell

Deputy City Solicitor

Law Department-Civil Rights Unit

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CERTIFICATE OF SERVICE

I hereby certify that on this date, a true and correct copy of Defendants, City of Philadelphia and Felix Rivera's **Answer with Affirmative Defenses to Plaintiff's Amended Complaint** was filed via ECF and is available for viewing and downloading via the ECF system. I further certify that I directed that a copy of same should be served upon counsel for the plaintiff, via first class mail, postage prepaid, as follows:

TO: Reginald Allen, Esquire
Attorney at Law
7601 Crittenden Street, Unit F12
Philadelphia, PA 19118

Date: August 9, 2011

Sincerely,

/s/ Niya L. Blackwell
NIYA L. BLACKWELL
Deputy City Solicitor